



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 8468549

Date: JAN. 27, 2021

**Appeal of Nebraska Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an instructional technologist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

---

<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>4</sup> The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

After receiving his Ph.D., the Petitioner worked as a research assistant and online facilitator at [ ] University [ ] until January 2014. Since January 2014, the Petitioner has been employed as a program analyst with [ ].<sup>5</sup> As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends “to work in the field of educational technology as an instructional technologist with teaching assignments for curriculum and instructional design courses and professional training programs.” He explains that “[i]nstructional design is the process by which learning products and experiences are designed, developed, and delivered. These learning products include online courses, instructional manuals, video tutorials, and learning simulations.” The Petitioner further stated that he plans “to collaborate with faculty, staff, and public interest stakeholders to design, develop, and implement blended and online courses and/or training modules.” In addition, he asserted that his undertaking involves “teaching, research, academic scholarship, and creative activity, as well as “service to the university, instructional technology profession, and the greater community.”

The record supports the Director’s determination that the Petitioner’s proposed work involving instructional design and research has substantial merit and national importance. For example, the record includes a letter from [ ] professor of social medicine at [ ] asserting that the Petitioner’s undertaking stands “to contribute to the development of a strong educational system.” Furthermore, the Petitioner provided documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through professional journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed research and instructional design work, he has established that he meets the first prong of the *Dhanasar* framework.<sup>6</sup>

---

<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> The Petitioner received a Ph.D. in Curriculum and Instruction from [ ] University in August 2012.

<sup>5</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his position to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

<sup>6</sup> With respect to the Petitioner’s proposed work as a teacher at his university, while this endeavor has substantial merit,

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, membership in the Association for the Advancement of Computing in Education (AACE), scholarly articles, peer review activity, and experience as a facilitator for [REDACTED]'s [REDACTED] course.<sup>7</sup> The Petitioner also offered two examples of articles that cited to his published and presented work, and letters of support discussing his projects at [REDACTED] University.

In letters supporting the petition, the Petitioner's references discussed his work at [redacted] University.<sup>8</sup> For example, regarding the Petitioner's work involving integration of internet and computer technologies in instruction and learning, [redacted] technology coordinator at [redacted] University, stated that the Petitioner authored a dissertation, entitled "[redacted]  
[redacted]" [redacted] indicated that the Petitioner's work explained "how instructors could foster a culture of learning where students regard themselves as contributors to their own learning and that of the community." Likewise, [redacted], professor of educational studies at [redacted] University, asserted that the Petitioner's dissertation "advances our understanding of how online learning can be tailored to the specific needs of learners," "has been widely distributed," and "is part of an ongoing collaboration." [redacted] and [redacted] however, did not provide specific examples indicating that the Petitioner's work has affected online learning practices at multiple universities or otherwise constitutes a record of success in the academic field.

the record does not establish that his instructional work stands to impact the field of educational technology more broadly, as opposed to being limited to his students. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's instructional work does not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

<sup>8</sup> While we discuss a sampling of these letters, we have reviewed and considered each one.

that the Petitioner's work focused "on the correlation between [redacted] participation in global health programs and their choice of medical specialty and location of their medical practice," she did not explain how his findings have been implemented, utilized, or applauded by others in the field.

Regarding the Petitioner's instructional technology work, [redacted] asserted that he "played a significant role in development and implementation" of her [redacted] course, but the record does not show that this work stands to be utilized beyond [redacted] University. [redacted] further indicated that the Petitioner "worked closely with me, as the content expert, and offered to support other instructors on various ways that online environment tools are deployed to enhance different teaching methods." She did not offer examples of how the Petitioner's work has influenced the educational technology field, has served as an impetus for progress or generated positive discourse in the field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed endeavor.

As it relates to the citation of the Petitioner's work, he provided documentation of two articles citing to his published and presented work. The record, however, does not include comparative statistics indicating how often others in his field are cited, nor has the Petitioner otherwise demonstrated that the number of citations received by his publications and presentations reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

Regarding his peer review activity, the Petitioner presented webpages from AACE listing him among more than 90 individuals who serve as editorial review board members for *International Journal on E-Learning* and among more than 120 individuals who serve as "Program Committee Members." In addition, he submitted a February 2010 email asking him to provide review comments for a [redacted]

[redacted] The record, however, does not include documentation of the reviews he completed for AACE and the [redacted] The Petitioner also offered a May 2016 email thanking him for serving on a peer review panel for the American Educational Research Association (AERA) annual meeting in 2016. Furthermore, he provided "Review Paper" assignments from the "AACE Publish System" portal for two papers entitled "[redacted]" and "[redacted]".<sup>9</sup>

The record, however, does not contain evidence showing that the Petitioner completed the aforementioned reviews or identifying the papers he reviewed for AERA. Regardless, the Petitioner has not demonstrated that occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his proposed endeavor.

The Petitioner also submitted documentation of his membership in the AACE. The record, however, does not include evidence demonstrating the significance or level of distinction of this membership in his field. Nor has the Petitioner established that his membership is sufficient to show a record of success in his research or a level of interest in his work from relevant parties signifying that he is well positioned to advance his proposed work.

---

<sup>9</sup> These assignments both indicated that while the Petitioner had accepted the reviews, he had not yet completed them.

With respect to the Petitioner's education, while his Ph.D. and two master's degrees from [ ] University render him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor, and education is merely one factor among many that may contribute to such a finding.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies and professional career, but he has not shown that this work renders him well positioned to advance his proposed research and instructional design work. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the educational technology field or that it has generated substantial positive discourse in the academic community. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to instructional technology. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, professional experience, and expertise in emerging instructional technologies. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

## III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.